

NEBRASKA PARENTING ACT (includes 2009 amendments)

43-2920. Act, how cited.

Sections 43-2920 to 43-2943 shall be known and may be cited as the Parenting Act.

Source: Laws 2007, LB554, § 1.

43-2921. Legislative findings.

The Legislature finds that it is in the best interests of a child that a parenting plan be developed in any proceeding under Chapter 42 involving custody, parenting time, visitation, or other access with a child and that the parenting plan establish specific individual responsibility for performing such parenting functions as are necessary and appropriate for the care and healthy development of each child affected by the parenting plan.

The Legislature further finds that it is in the best interests of a child to have a safe, stable, and nurturing environment. The best interests of each child shall be paramount and consideration shall be given to the desires and wishes of the child if of an age of comprehension regardless of chronological age, when such desires and wishes are based on sound reasoning.

In any proceeding involving a child, the best interests of the child shall be the standard by which the court adjudicates and establishes the individual responsibilities, including consideration in any custody, parenting time, visitation, or other access determinations as well as resolution of conflicts affecting each child. The state presumes the critical importance of the parent-child relationship in the welfare and development of the child and that the relationship between the child and each parent should be equally considered unless it is contrary to the best interests of the child.

Given the potential profound effects on children from witnessing child abuse or neglect or domestic intimate partner abuse, as well as being directly abused, the courts shall recognize the duty and responsibility to keep the child or children safe when presented with a preponderance of the evidence of child abuse or neglect or domestic intimate partner abuse, including evidence of a child being used by the abuser to establish or maintain power and control over the victim. In domestic intimate partner abuse cases, the best interests of each child are often served by keeping the child and the victimized partner safe and not allowing the abuser to continue the abuse. When child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict prevents the best interests of the child from being served in the parenting arrangement, then the safety and welfare of the child is paramount in the resolution of those conflicts.

Source: Laws 2007, LB554, § 2.

43-2922. Terms, defined.

For purposes of the Parenting Act:

(1) Appropriate means reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law;

(2) Approved mediation center means a mediation center approved by the Office of Dispute Resolution;

(3) Best interests of the child means the determination made taking into account the requirements stated in section 43-2923;

(4) Child means a minor under nineteen years of age;

(5) Child abuse or neglect has the same meaning as in section 28-710;

(6) Court conciliation program means a court-based conciliation program under the Conciliation Court Law;

(7) Custody includes legal custody and physical custody;

(8) Domestic intimate partner abuse means an act of abuse as defined in section 42-903 and a pattern or history of abuse evidenced by one or more of the following acts: Physical or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse,

intimidation, isolation, economic abuse, or coercion against any current or past intimate partner, or an abuser using a child to establish or maintain power and control over any current or past intimate partner, and, when they contribute to the coercion or intimidation of an intimate partner, acts of child abuse or neglect or threats of such acts, cruel mistreatment or cruel neglect of an animal as defined in section 28-1008, or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or household members. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding an act of child abuse or neglect or a threat of such act, and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;

(9) Economic abuse means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the victim's resources for personal gain of the abuser, or withholding physical resources such as food, clothing, necessary medications, or shelter;

(10) Emotional abuse means a pattern of acts, threats of acts, or coercive tactics, including, but not limited to, threatening or intimidating to gain compliance, destruction of the victim's personal property or threats to do so, violence to an animal or object in the presence of the victim as a way to instill fear, yelling, screaming, name-calling, shaming, mocking, or criticizing the victim, possessiveness, or isolation from friends and family. Emotional abuse can be verbal or nonverbal;

(11) Joint legal custody means mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health;

(12) Joint physical custody means mutual authority and responsibility of the parents regarding the child's place of residence and the exertion of continuous blocks of parenting time by both parents over the child for significant periods of time;

(13) Legal custody means the authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health;

(14) Mediation means a method of nonjudicial intervention in which a trained, neutral third-party mediator, who has no decisionmaking authority, provides a structured process in which individuals and families in conflict work through parenting and other related family issues with the goal of achieving a voluntary, mutually agreeable parenting plan or related resolution;

(15) Mediator means a mediator meeting the qualifications of section 43-2938 and acting in accordance with the Parenting Act;

(16) Office of Dispute Resolution means the office established under section 25-2904;

(17) Parenting functions means those aspects of the relationship in which a parent or person in the parenting role makes fundamental decisions and performs fundamental functions necessary for the care and development of a child. Parenting functions include, but are not limited to:

(a) Maintaining a safe, stable, consistent, and nurturing relationship with the child;

(b) Attending to the ongoing developmental needs of the child, including feeding, clothing, physical care and grooming, health and medical needs, emotional stability, supervision, and appropriate conflict resolution skills and engaging in other activities appropriate to the healthy development of the child within the social and economic circumstances of the family;

(c) Attending to adequate education for the child, including remedial or other special education essential to the best interests of the child;

(d) Assisting the child in maintaining a safe, positive, and appropriate relationship with each parent and other family members, including establishing and maintaining the authority and responsibilities of each party with respect to the child and honoring the parenting plan duties and responsibilities;

(e) Minimizing the child's exposure to harmful parental conflict;

(f) Assisting the child in developing skills to maintain safe, positive, and appropriate interpersonal relationships; and

(g) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the child within the social and economic circumstances of the family;

(18) Parenting plan means a plan for parenting the child that takes into account parenting functions;

(19) Parenting time, visitation, or other access means communication or time spent between the child and parent, the child and a court-appointed guardian, or the child and another family member or members;

(20) Physical custody means authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time;

(21) Provisions for safety means a plan developed to reduce risks of harm to children and adults who are victims of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict;

(22) Remediation process means the method established in the parenting plan which maintains the best interests of the child and provides a means to identify, discuss, and attempt to resolve future circumstantial changes or conflicts regarding the parenting functions and which minimizes repeated litigation and utilizes judicial intervention as a last resort;

(23) Specialized alternative dispute resolution means a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between the parties;

(24) Transition plan means a plan developed to reduce exposure of the child and the adult to ongoing unresolved parental conflict during parenting time, visitation, or other access for the exercise of parental functions; and

(25) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

Source: Laws 2007, LB554, § 3; Laws 2008, LB1014, § 55.

Operative Date: April 17, 2008

43-2923. Best interests of the child requirements.

The best interests of the child require:

(1) A parenting arrangement and parenting plan or other court-ordered arrangement which provides for a child's safety, emotional growth, health, stability, and physical care and regular and continuous school attendance and progress for school-age children;

(2) When a preponderance of the evidence indicates domestic intimate partner abuse, a parenting and visitation arrangement that provides for the safety of a victim parent;

(3) That the child's families and those serving in parenting roles remain appropriately active and involved in parenting with safe, appropriate, continuing quality contact between children and their families when they have shown the ability to act in the best interests of the child and have shared in the responsibilities of raising the child;

(4) That even when parents have voluntarily negotiated or mutually mediated and agreed upon a parenting plan, the court shall determine whether it is in the best interests of the child for parents to maintain continued communications with each other and to make joint decisions in performing parenting functions as are necessary for the care and healthy development of the child. If the court rejects a parenting plan, the court shall provide written findings as to why the parenting plan is not in the best interests of the child;

(5) That certain principles provide a basis upon which education of parents is delivered and upon which negotiation and mediation of parenting plans are conducted. Such principles shall include: To minimize the potentially negative impact of parental conflict on children; to provide parents the tools they need to reach parenting decisions that are in the best interests of a child; to provide alternative dispute resolution or specialized alternative dispute resolution options that are less adversarial for the child and the family; to ensure that the child's voice is heard and considered in parenting decisions; to maximize the safety of family members through the justice process; and, in cases of domestic intimate partner abuse or child abuse or neglect, to incorporate the principles of victim safety and sensitivity, offender accountability, and community safety in parenting plan decisions; and

(6) In determining custody and parenting arrangements, the court shall consider the best interests of the minor child, which shall include, but not be limited to, consideration of the foregoing factors and:

(a) The relationship of the minor child to each parent prior to the commencement of the action or any subsequent hearing;

(b) The desires and wishes of the minor child, if of an age of comprehension but regardless of chronological age, when such desires and wishes are based on sound reasoning;

(c) The general health, welfare, and social behavior of the minor child;

(d) Credible evidence of abuse inflicted on any family or household member. For purposes of this subdivision, abuse and family or household member shall have the meanings prescribed in section 42-903; and

(e) Credible evidence of child abuse or neglect or domestic intimate partner abuse. For purposes of this subdivision, the definitions in section 43-2922 shall be used.

Source: Laws 2007, LB554, § 4; Laws 2008, LB1014, § 56; Laws 2010, LB901, § 2.

Operative Date: July 1, 2010

Annotations

A court is required to devise a parenting plan and to consider joint legal and physical custody, but the court is not required to grant equal parenting time to the parents if such is not in the child's best interests. *Kamal v. Imroz*, 277 Neb. 116, 759 N.W.2d 914 (2009).

43-2924. Applicability of act.

(1) The Parenting Act shall apply to proceedings or modifications filed on or after January 1, 2008, in which parenting functions for a child are at issue (a) under Chapter 42, including, but not limited to, proceedings or modification of orders for dissolution of marriage and child custody and (b) under sections 43-1401 to 43-1418. The Parenting Act may apply to proceedings or modifications in which parenting functions for a child are at issue under Chapter 30 or 43.

(2) The Parenting Act does not apply in any action filed by a county attorney or authorized attorney pursuant to his or her duties under section 42-358, 43-512 to 43-512.18, or 43-1401 to 43-1418, the Income Withholding for Child Support Act, the Revised Uniform Reciprocal Enforcement of Support Act before January 1, 1994, or the Uniform Interstate Family Support Act for purposes of the establishment of paternity and the establishment and enforcement of child and medical support. A county attorney or authorized attorney shall not participate in the development of or court review of a parenting plan under the Parenting Act. If both parents are parties to a paternity or support action filed by a county attorney or authorized attorney, the parents may proceed with a parenting plan.

Source: Laws 2007, LB554, § 5; Laws 2008, LB1014, § 57.

Operative Date: April 17, 2008

43-2925. Proceeding in which parenting functions for child are at issue; information provided to parties; filing required.

(1) In any proceeding under Chapter 30 or 43 in which the parenting functions for a child are at issue, except any proceeding under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act, subsequent to the initial filing or upon filing of an application for modification of a decree, the parties shall receive from the clerk of the court information regarding the parenting plan, the mediation process, and resource materials, as well as the availability of mediation through court conciliation programs or approved mediation centers.

(2) In any proceeding under Chapter 42 and the Parenting Act in which the parenting functions for a child are at issue, subsequent to the filing of such proceeding all parties shall receive from the clerk of the court information regarding:

(a) The litigation process;

(b) A dissolution or separation process timeline;

(c) Healthy parenting approaches during and after the proceeding;

(d) Information on child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict;

(e) Mediation, specialized alternative dispute resolution, and other alternative dispute resolution processes available through court conciliation programs and approved mediation centers;

(f) Resource materials identifying the availability of services for victims of child abuse or neglect and domestic intimate partner abuse; and

(g) Intervention programs for batterers or abusers.

(3) The clerk of the court and counsel for represented parties shall file documentation of compliance with this section. Development of these informational materials and the implementation of this section shall be accomplished through the State Court Administrator.

Source: Laws 2007, LB554, § 6.

43-2926. State Court Administrator; create information sheet; contents; parenting plan mediation; distribution of information sheet.

The State Court Administrator shall create an information sheet for parties in a proceeding in which parenting functions for a child are at issue under the Parenting Act that includes information regarding parenting plans, child custody, parenting time, visitation, and other access and that informs the parties that they are required to attend a basic level parenting education course. The information sheet shall also state (1) that the parties have the right to agree to a parenting plan arrangement, (2) that before July 1, 2010, if they do not agree, they may be required, and on and after July 1, 2010, if they do not agree, they shall be required to participate in parenting plan mediation, and (3) that if mediation does not result in an agreement, the court will be required to create a parenting plan. The information sheet shall also provide information on how to obtain assistance in resolving a custody case, including, but not limited to, information on finding an attorney, information on accessing court-based self-help services if they are available, information about domestic violence service agencies, information about mediation, and information regarding other sources of assistance in developing a parenting plan. The State Court Administrator shall adopt this information sheet as a statewide form and take reasonable steps to ensure that it is distributed statewide and made available to parties in parenting function matters.

Source: Laws 2007, LB554, § 7.

43-2927. Training; screening guidelines and safety procedures; State Court Administrator's office; duties.

(1) Mediators involved in proceedings under the Parenting Act shall participate in training approved by the State Court Administrator to recognize child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict and its potential impact upon children and families.

(2) Screening guidelines and safety procedures for cases involving conditions identified in subsection (1) of section 43-2939 shall be devised by the State Court Administrator. Such screening shall be conducted by mediators using State Court Administrator-approved screening tools.

(3) Such screening shall be conducted as a part of the individual initial screening session for each case referred to mediation under the Parenting Act prior to setting the case for mediation to determine whether or not it is appropriate to proceed in mediation or to proceed in a form of specialized alternative dispute resolution.

(4) The State Court Administrator's office, in collaboration with professionals in the fields of domestic abuse services, child and family services, mediation, and law, shall develop and approve curricula for the training required under subsection (1) of this section, as well as develop and approve rules, procedures, and forms for training and screening for child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict.

Source: Laws 2007, LB554, § 8; Laws 2008, LB1014, § 58.

Operative Date: April 17, 2008

43-2928. Attendance at basic level parenting education course; delay or waiver; second-level parenting education course; State Court Administrator; duties; costs.

(1) The court shall order all parties to a proceeding under the Parenting Act to attend a basic level parenting education course. Participation in the course may be delayed or waived by the court for good cause shown. Failure or refusal by any party to participate in such a course as ordered by the court shall not delay the entry of a final judgment or an order modifying a final judgment in such action by more than six months and shall in no case be punished by incarceration.

(2) The court may order parties under the act to attend a second-level parenting education course subsequent to completion of the basic level course when screening or a factual determination of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict has been identified.

(3) The State Court Administrator shall approve all parenting education courses under the act.

(4) The basic level parenting education course pursuant to this section shall be designed to educate the parties about the impact of the pending court action upon the child and appropriate application of parenting functions. The course shall include, but not be limited to, information on the developmental stages of children, adjustment of a child to parental separation, the litigation and court process, alternative dispute resolution, conflict management, stress reduction, guidelines for parenting time, visitation, or other access, provisions for safety and transition plans, and information about parents and children affected by child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict.

(5) The second-level parenting education course pursuant to this section shall include, but not be limited to, information about development of provisions for safety and transition plans, the potentially harmful impact of domestic intimate partner abuse and unresolved parental conflict on the child, use of effective communication techniques and protocols, resource and referral information for victim and perpetrator services, batterer intervention programs, and referrals for mental health services, substance abuse services, and other community resources.

(6) Each party shall be responsible for the costs, if any, of attending any court-ordered parenting education course. At the request of any party, or based upon screening or recommendation of a mediator, the parties shall be allowed to attend separate courses or to attend the same course at different times, particularly if child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict is or has been present in the relationship or one party has threatened the other party.

Source: Laws 2007, LB554, § 9; Laws 2008, LB1014, § 59.

Operative Date: April 17, 2008

43-2929. Parenting plan; developed; approved by court; contents.

(1) In any proceeding in which parenting functions for a child are at issue under Chapter 42, a parenting plan shall be developed and shall be approved by the court. Court rule may provide for the parenting plan to be developed by the parties or their counsel, a court conciliation program, an approved mediation center, or a private mediator. When a parenting plan has not been developed and submitted to the court, the court shall create the parenting plan in accordance with the Parenting Act. A parenting plan shall serve the best interests of the child pursuant to sections 42-364 and 43-2923 and shall:

(a) Assist in developing a restructured family that serves the best interests of the child by accomplishing the parenting functions; and

(b) Include, but not be limited to, determinations of the following:

(i) Legal custody and physical custody of each child;

(ii) Apportionment of parenting time, visitation, or other access for each child, including, but not limited to, specified religious and secular holidays, birthdays, Mother's Day, Father's Day, school and family vacations, and other special occasions, specifying dates and times for the same, or a formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be

enforced in subsequent proceedings by the court, and set out appropriate times and numbers for telephone access;

(iii) Location of the child during the week, weekend, and given days during the year;

(iv) A transition plan, including the time and places for transfer of the child, method of communication or amount and type of contact between the parties during transfers, and duties related to transportation of the child during transfers;

(v) Procedures for making decisions regarding the day-to-day care and control of the child consistent with the major decisions made by the person or persons who have legal custody and responsibility for parenting functions;

(vi) Provisions for a remediation process regarding future modifications to such plan;

(vii) Arrangements to maximize the safety of all parties and the child;

(viii) Provisions to ensure regular and continuous school attendance and progress for school-age children of the parties; and

(ix) Provisions for safety when a preponderance of the evidence establishes child abuse or neglect, domestic intimate partner abuse, unresolved parental conflict, or criminal activity which is directly harmful to a child.

(2) A parenting plan shall require that the parties notify each other of a change of address, except that the address or return address shall only include the county and state for a party who is living or moving to an undisclosed location because of safety concerns.

(3) When safe and appropriate for the best interests of the child, the parenting plan may encourage mutual discussion of major decisions regarding parenting functions including the child's education, health care, and spiritual or religious upbringing. However, when a prior factual determination of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict has been made, then consideration shall be given to inclusion of provisions for safety and a transition plan that restrict communication or the amount and type of contact between the parties during transfers.

(4) Regardless of the custody determinations in the parenting plan, unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(5) In the development of a parenting plan, consideration shall be given to the child's age, the child's developmental needs, and the child's perspective, as well as consideration of enhancing healthy relationships between the child and each party.

Source: Laws 2007, LB554, § 10; Laws 2008, LB1014, § 60.

Operative Date: April 17, 2008

43-2930. Child information affidavit; when required; contents; hearing; temporary parenting order; contents; form; temporary support.

(1) Each party to a contested proceeding for a temporary order relating to parenting functions or custody, parenting time, visitation, or other access shall offer a child information affidavit as an exhibit at the hearing before the court. The child information affidavit shall be verified to the extent known or reasonably discoverable by the filing party or parties and may include the following:

(a) The name, address, and length of residence with any adults with whom each child has lived for the preceding twelve months; except that the address shall only include the county and state for a parent who is living in an undisclosed location because of safety concerns;

(b) The performance by each parent or person acting as parent for the preceding twelve months of the parenting functions relating to the daily needs of the child;

(c) A description of the work and child care schedules for the preceding twelve months of any person seeking custody, parenting time, visitation, or other access and any expected changes to these schedules in the near future;

(d) A description of the current proposed work and child care schedules; and

(e) A description of the child's school and extracurricular activities, including who is responsible for transportation of the child.

The child information affidavit may also state any circumstances of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict that are likely to pose a risk to the child and that warrant limitation on the award of temporary custody, parenting time, visitation, or other access to the child pending entry of a permanent parenting plan, including any restraining orders, protection orders, or criminal no-contact orders against either parent or a person acting as a parent by case number and jurisdiction.

(2) After a contested hearing by live testimony or affidavit, the court shall enter a temporary parenting order that includes:

(a) Provision for temporary legal custody;

(b) Provisions for temporary physical custody, which shall include either:

(i) A parenting time, visitation, or other access schedule that designates in which home each child will reside on given days of the year; or

(ii) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(c) Designation of a temporary residence for the child;

(d) Reference to any existing restraining orders, protection orders, or criminal no-contact orders as well as provisions for safety and a transition plan, consistent with any court's finding of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict in order to provide for the safety of a child and custodial parent necessary for the best interests of the child; and

(e) If appropriate, a requirement that a parent complete a program of intervention for perpetrators of domestic violence, a program for drug or alcohol abuse, or a program designed to correct another factor as a condition of parenting time.

(3) A party may move for an order to show cause, and the court may enter a modified temporary parenting order.

(4) The State Court Administrator's office shall create a form that may be used by the parties to create a child information affidavit setting forth the elements identified in this section.

(5) Provisions for temporary support for the child and other financial matters may be included in the temporary parenting order.

Source: Laws 2007, LB554, § 11; Laws 2008, LB1014, § 61.

Operative Date: April 17, 2008

43-2931. Repealed. Laws 2008, LB 1014, § 81.

43-2932. Parenting plan; limitations to protect child or child's parent from harm; effect of court determination; burden of proof.

(1) When the court is required to develop a parenting plan:

(a) If a preponderance of the evidence demonstrates, the court shall determine whether a parent who would otherwise be allocated custody, parenting time, visitation, or other access to the child under a parenting plan:

(i) Has committed child abuse or neglect;

(ii) Has committed child abandonment under section 28-705;

(iii) Has committed domestic intimate partner abuse; or

(iv) Has interfered persistently with the other parent's access to the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; and

(b) If a parent is found to have engaged in any activity specified by subdivision (1)(a) of this section, limits shall be imposed that are reasonably calculated to protect the child or child's parent from harm. The limitations may include, but are not limited to:

(i) An adjustment of the custody of the child, including the allocation of sole legal custody or physical custody to one parent;

(ii) Supervision of the parenting time, visitation, or other access between a parent and the child;

(iii) Exchange of the child between parents through an intermediary or in a protected setting;
(iv) Restraints on the parent from communication with or proximity to the other parent or the child;
(v) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in a prescribed period immediately preceding such exercise;
(vi) Denial of overnight physical custodial parenting time;
(vii) Restrictions on the presence of specific persons while the parent is with the child;
(viii) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising physical custodial parenting time or to secure other performance required by the court; or
(ix) Any other constraints or conditions deemed necessary to provide for the safety of the child, a child's parent, or any person whose safety immediately affects the child's welfare.

(2) A court determination under this section shall not be considered a report for purposes of inclusion in the central register of child protection cases pursuant to the Child Protection Act.

(3) If a parent is found to have engaged in any activity specified in subsection (1) of this section, the court shall not order legal or physical custody to be given to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under such subsection. The parent found to have engaged in the behavior specified in subsection (1) of this section has the burden of proving that legal or physical custody, parenting time, visitation, or other access to that parent will not endanger the child or the other parent.

Source: Laws 2007, LB554, § 13; Laws 2008, LB1014, § 62.

Operative Date: April 17, 2008

43-2933. Registered sex offender; other criminal convictions; limitation on or denial of custody or access to child; presumption; modification of previous order.

(1)(a) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if the person is required to be registered as a sex offender under the Sex Offender Registration Act for an offense that would make it contrary to the best interests of the child for such access or for an offense in which the victim was a minor or if the person has been convicted under section 28-311, 28-319.01, 28-320, 28-320.01, or 28-320.02, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(b) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if anyone residing in the person's household is required to register as a sex offender under the Sex Offender Registration Act as a result of a felony conviction in which the victim was a minor or for an offense that would make it contrary to the best interests of the child for such access unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(c) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under the Sex Offender Registration Act shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the other party seeking custody, parenting time, visitation, or other access is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under the Sex Offender Registration Act.

(2) No person shall be granted custody, parenting time, visitation, or other access with a child if the person has been convicted under section 28-319 and the child was conceived as a result of that violation.

(3) A change in circumstances relating to subsection (1) or (2) of this section is sufficient grounds for modification of a previous order.

Source: Laws 2007, LB554, § 14.

43-2934. Restraining order, protection order, or criminal no-contact order; effect; court findings; court powers and duties.

(1) Whenever custody, parenting time, visitation, or other access is granted to a parent in a case in which domestic intimate partner abuse is alleged and a restraining order, protection order, or criminal no-contact order has been issued, the custody, parenting time, visitation, or other access order shall specify the time, day, place, and manner of transfer of the child for custody, parenting time, visitation, or other access to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. If the court finds that a party is staying in a place designated as a shelter for victims of domestic abuse or other confidential location, the time, day, place, and manner of transfer of the child for custody, parenting time, visitation, or other access shall be designed to prevent disclosure of the location of the shelter or other confidential location.

(2) When making an order or parenting plan for custody, parenting time, visitation, or other access in a case in which domestic abuse is alleged and a restraining order, protection order, or criminal no-contact order has been issued, the court shall consider whether the best interests of the child, based upon the circumstances of the case, require that any custody, parenting time, visitation, or other access arrangement be limited to situations in which a third person, specified by the court, is present, or whether custody, parenting time, visitation, or other access should be suspended or denied.

(3) When required by the best interests of the child, the court may enter a custody, parenting time, visitation, or other access order that is inconsistent with an existing restraining order, protection order, or criminal no-contact order. However, it may do so only if it has jurisdiction and authority to do so.

(4) If the court lacks jurisdiction or is otherwise unable to modify the restraining order, protection order, or criminal no-contact order, the court shall require that a certified copy of the custody, parenting time, visitation, or other access order be placed in the court file containing the restraining order, protection order, or criminal no-contact order.

Source: Laws 2007, LB554, § 15; Laws 2008, LB1014, § 63.

Operative Date: April 17, 2008

43-2935. Hearing; parenting plan; modification; court powers.

After a hearing on the record, the court shall determine whether the submitted parenting plan meets all of the requirements of the Parenting Act and is in the best interests of the child. If the parenting plan lacks any of the elements required by the act or is not in the child's best interests, the court shall modify and approve the parenting plan as modified, reject the parenting plan and order the parties to develop a new parenting plan, or reject the parenting plan and create a parenting plan that meets all the required elements and is in the best interests of the child. The court may include in the parenting plan:

(1) A provision for resolution of disputes that arise under the parenting plan, including provisions for suspension of parenting time, visitation, and other access when new findings of child abuse or neglect, domestic intimate partner abuse, criminal activity affecting the best interests of a child, or the violation of a protection order, restraining order, or criminal no-contact order occur, until a modified custody order or parenting plan with provisions for safety or a transition plan, or both, is in place; and

(2) Consequences for failure to follow parenting plan provisions.

Source: Laws 2007, LB554, § 16.

43-2936. Request for mediation, specialized alternative dispute resolution, or other alternative dispute resolution process; information provided to parties.

An individual party, a guardian ad litem, or a social service agency may request that a custody, parenting time, visitation, other access, or related matter proceed to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process at any time prior to the filing or after the filing of an action with a court. Upon receipt of such request, each mediator, court conciliation program, or approved mediation center shall provide information about mediation and specialized alternative dispute resolution to each party.

Source: Laws 2007, LB554, § 17; Laws 2008, LB1014, § 64.

Operative Date: April 17, 2008

43-2937. Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when; waiver.

(1) In addition to those cases that are mandatorily referred to mediation or specialized alternative dispute resolution under subsection (3) of this section, a court may, at any time in the proceedings upon its own motion or upon the motion of either party, refer a case to mediation or specialized alternative dispute resolution in order to attempt resolution of any relevant matter. The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for cause. If the court refers a case to mediation or specialized alternative dispute resolution, the court may, if appropriate, order temporary relief, including necessary support and provision for payment of mediation costs. Court referral shall be to a mediator agreed to by the parties and approved by the court, an approved mediation center, or a court conciliation program. The State Court Administrator's office shall develop a process to approve mediators under the Parenting Act.

(2) Prior to July 1, 2010, if there are allegations of domestic intimate partner abuse or unresolved parental conflict between the parties in any proceeding, mediation shall not be required pursuant to the Parenting Act or by local court rule, unless the court has established a specialized alternative dispute resolution rule approved by the State Court Administrator. The specialized alternative dispute resolution process shall include a method for court consideration of precluding or disqualifying parties from participating; provide an opportunity to educate both parties about the process; require informed consent from both parties in order to proceed; provide safety protocols, including separate individual sessions for each participant, informing each party about the process, and obtaining informed consent from each party to continue the process; allow support persons to attend sessions; and establish opt-out-for-cause provisions. On and after July 1, 2010, all trial courts shall have a mediation and specialized alternative dispute resolution rule in accordance with the act.

(3) Except as provided in subsection (4) of this section, for cases filed on or after July 1, 2010, all parties who have not submitted a parenting plan to the court within the time specified by the court shall be ordered to participate in mediation or specialized alternative dispute resolution with a mediator, a court conciliation program, or an approved mediation center as provided in section 43-2939.

(4) For good cause shown and (a) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (b) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

Source: Laws 2007, LB554, § 18; Laws 2008, LB1014, § 65; Laws 2010, LB901, § 3.

Operative Date: July 1, 2010

43-2938. Mediator; qualifications; training; approved specialized mediator; requirements.

(1) A mediator under the Parenting Act may be a court conciliation program counselor, a court conciliation program mediator, an approved mediation center affiliated mediator, or a mediator in private practice.

(2) To qualify as a Parenting Act mediator, a person shall have basic mediation training and family mediation training, approved by the Office of Dispute Resolution, and shall have served as an apprentice to a mediator as defined in section 25-2903. The training shall include, but not be limited to:

(a) Knowledge of the court system and procedures used in contested family matters;

(b) General knowledge of family law, especially regarding custody, parenting time, visitation, and other access, and support, including calculation of child support using the child support guidelines pursuant to section 42-364.16;

(c) Knowledge of other resources in the state to which parties and children can be referred for assistance;

(d) General knowledge of child development, the potential effects of dissolution or parental separation upon children, parents, and extended families, and the psychology of families;

(e) Knowledge of child abuse or neglect and domestic intimate partner abuse and their potential impact upon the safety of family members, including knowledge of provisions for safety, transition plans, domestic intimate partner abuse screening protocols, and mediation safety measures; and

(f) Knowledge in regard to the potential effects of domestic violence on a child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; interviewing, documentation of, and appropriate recommendations for families affected by domestic intimate partner abuse; and availability of community and legal domestic violence resources.

(3) To qualify as an approved specialized mediator for parents involved in high conflict and situations in which abuse is present, the mediator shall apply to an approved mediation center or court conciliation program for consideration to be listed as an approved specialized mediator. The approved mediation center or court conciliation program shall submit its list of approved specialized mediators to the Office of Dispute Resolution on an annual basis. Minimum requirements to be listed as an approved specialized mediator include:

(a) Affiliation with a court conciliation program or an approved mediation center;

(b) Meeting the minimum standards for a Parenting Act mediator under this section;

(c) Meeting additional relevant standards and qualifications as determined by the State Court Administrator; and

(d) Satisfactorily completing an additional minimum twenty-four-hour specialized alternative dispute resolution domestic mediation training course developed by entities providing domestic abuse services and mediation services for children and families and approved by the State Court Administrator. This course shall include advanced education in regard to the potential effects of domestic violence on the child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; and appropriate and safe mediation strategies to assist parties in developing a parenting plan, provisions for safety, and a transition plan, as necessary and relevant.

Source: Laws 2007, LB554, § 19.

43-2939. Parenting Act mediator; duties; conflict of interest; report of child abuse or neglect; termination of mediation.

(1) A Parenting Act mediator, prior to meeting with the parties in an initial mediation session, shall provide an individual initial screening session with each party to assess the presence of child abuse or neglect, unresolved parental conflict, domestic intimate partner abuse, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions. If any of these conditions exist, the mediator shall not proceed with the mediation session but shall proceed with a specialized alternative dispute resolution process that addresses safety measures for the parties, if the mediator is on the approved specialized list of an approved mediation center or court conciliation program, or shall refer the parties to a mediator who is so qualified. When public records such as current or expired protection orders, criminal domestic violence cases, and child abuse or neglect proceedings are provided to a mediator, such records shall be considered during the individual initial screening session to determine appropriate dispute resolution methods. The mediator has the duty to determine whether to proceed in joint session, individual sessions, or caucus meetings with the parties in order to address safety and freedom to negotiate. In any mediation or specialized alternative dispute

resolution, a mediator has the ongoing duty to assess appropriateness of the process and safety of the process upon the parties.

(2) No mediator who represents or has represented one or both of the parties or has had either of the parties as a client as an attorney or a counselor shall mediate the case, unless such services have been provided to both participants and mediation shall not proceed in such cases unless the prior relationship has been disclosed, the role of the mediator has been made distinct from the earlier relationship, and the participants have been given the opportunity to fully choose to proceed. All other potential conflicts of interest shall be disclosed and discussed before the parties decide whether to proceed with that mediator.

(3) No mediator who is also a licensed attorney may, after completion of the mediation process, represent either party in the role of attorney in the same matter through subsequent legal proceedings.

(4) The mediator shall facilitate the mediation process. Prior to the commencement of mediation, the mediator shall notify the parties that, if the mediator has reasonable cause to believe that a child has been subjected to child abuse or neglect or if the mediator observes a child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, the mediator is obligated under section 28-711 to report such information to the authorized child abuse and neglect reporting agency and shall report such information unless the information has been previously reported. The mediator shall have access to court files for purposes of mediation under the Parenting Act. The mediator shall be impartial and shall use his or her best efforts to effect an agreement or parenting plan as required under the act. The mediator may interview the child if, in the mediator's opinion, such an interview is necessary or appropriate. The parties shall not bring the child to any sessions with the mediator unless specific arrangements have been made with the mediator in advance of the session. The mediator shall assist the parties in assessing their needs and the best interests of the child involved in the proceeding and may include other persons in the mediation process as necessary or appropriate. The mediator shall advise the parties that they should consult with an attorney.

(5) The mediator may terminate mediation if one or more of the following conditions exist:

(a) There is no reasonable possibility that mediation will promote the development of an effective parenting plan;

(b) Allegations are made of direct physical or significant emotional harm to a party or to a child that have not been heard and ruled upon by the court; or

(c) Mediation will otherwise fail to serve the best interests of the child.

(6) Until July 1, 2010, either party may terminate mediation at any point in the process. On and after July 1, 2010, a party may not terminate mediation until after an individual initial screening session and one mediation or specialized alternative dispute resolution session are held. The session after the individual initial screening session shall be an individual specialized alternative dispute resolution session if the screening indicated the existence of any condition specified in subsection (1) of this section.

Source: Laws 2007, LB554, § 20.

43-2940. Mediation; uniform standards of practice; State Court Administrator; duties; mediation conducted in private.

(1) Mediation of cases under the Parenting Act shall be governed by uniform standards of practice adopted by the State Court Administrator. In adopting the standards of practice, the State Court Administrator shall consider standards developed by recognized associations of mediators and attorneys and other relevant standards governing mediation and other dispute resolution processes of proceedings for the determination of parenting plans or dissolution of marriage. The standards of practice shall include, but not be limited to, all of the following:

(a) Provision for the best interests of the child and the safeguarding of the rights of the child in regard to each parent, consistent with the act;

(b) Facilitation of the transition of the family by detailing factors to be considered in decisions concerning the child's future;

(c) The conducting of negotiations in such a way as to address the relationships between the parties, considering safety and the ability to freely negotiate and make decisions; and

(d) Provision for a specialized alternative dispute resolution process in cases where any of the conditions specified in subsection (1) of section 43-2939 exist.

(2) Mediation under the Parenting Act shall be conducted in private.

Source: Laws 2007, LB554, § 21.

43-2941. Mediation subject to other laws; claim of privilege; disclosures authorized.

Mediation of a parenting plan shall be subject to the Uniform Mediation Act and the Dispute Resolution Act, to the extent such acts are not in conflict with the Parenting Act. Unsigned mediated agreements under the Parenting Act are not subject to a claim of privilege under subdivision (a)(1) of section 25-2935. In addition to disclosures permitted in section 25-2936, a mediator under the Parenting Act may also disclose a party's failure to schedule an individual initial screening session or a mediation session.

Source: Laws 2007, LB554, § 22.

43-2942. Costs.

The costs of the mediation process shall be paid by the parties. If the court orders the parties to mediation, the costs to the parties shall be charged according to a sliding fee scale as established by the State Court Administrator.

Source: Laws 2007, LB554, § 23.

43-2943. Rules; Parenting Act Fund; created; use; investment.

(1) The State Court Administrator may develop rules to implement the Parenting Act.

(2) The Parenting Act Fund is created. The State Court Administrator, through the Office of Dispute Resolution, approved mediation centers, and court conciliation programs, shall use the fund to carry out the Parenting Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB554, § 24; Laws 2008, LB1014, § 66.

Operative Date: April 17, 2008